

THOMAS J. HIGGINS

Debtor

Bk. No. 09-13885 JKF

**NATIONAL CITY MORTGAGE COMPANY D/B/A
ACCUBANC MORTGAGE**

Chapter No. 13

Movant

11 U.S.C. §362

V.

THOMAS J. HIGGINS

Respondent

**MOTION OF NATIONAL CITY MORTGAGE COMPANY D/B/A ACCUBANC
MORTGAGE FOR RELIEF FROM AUTOMATIC STAY UNDER §362 PURSUANT TO
BANKRUPTCY PROCEDURE RULE 4001**

Movant, by its attorneys, PHELAN HALLINAN & SCHMIEG, LLP, hereby requests a termination of Automatic Stay and leave to foreclose on its mortgage on real property owned by Debtor THOMAS J. HIGGINS.

1. Movant is **NATIONAL CITY MORTGAGE COMPANY D/B/A ACCUBANC MORTGAGE**.
2. Debtor **THOMAS J. HIGGINS** is the owner of the premises located at **4027 NORTH WARNER ROAD, LAFAYETTE HILL, PA 19444**, hereinafter known as the mortgaged premises.
3. Movant is the holder of a mortgage on the mortgaged premises.
4. Debtor's failure to tender monthly payments in a manner consistent with the terms of the Mortgage and Note result in a lack of adequate protection.
5. Movant has instituted foreclosure proceedings on the mortgage because of Debtor's failure to make the monthly payment required hereunder.
6. The foreclosure proceedings were stayed by the filing of the instant Chapter 13 Petition.
7. As of the date of the filing of this motion, Debtor has failed to tender post-petition mortgage payments for the months of June 2009 through August 2009. The monthly payment for the months

of June 1, 2009 through August 1, 2009 are \$1,822.59, with an accrued late charge in the amount of \$283.88, for a total amount due of \$5,751.65. The next payment is due on or before September 1, 2009 in the amount of \$1,822.59. Under the terms of the Note and Mortgage, Debtor has a continuing obligation to remain current post-petition and failure to do so results in a lack of adequate protection to Movant.

8. Movant, **NATIONAL CITY MORTGAGE COMPANY D/B/A ACCUBANC MORTGAGE** requests the Court award reimbursement in the amount of \$800.00 for the legal fees and costs associated with this Motion.

9. Movant has cause to have the Automatic Stay terminated as to permit Movant to complete foreclosure on its mortgage.

10. Rule 4001 (a)(3) should not be applicable and **NATIONAL CITY MORTGAGE COMPANY D/B/A ACCUBANC MORTGAGE** should be allowed to immediately enforce and implement the Order granting relief from the Automatic Stay.

WHEREFORE, Movant respectfully requests that this Court enter an Order;

a. modifying the Automatic Stay under §362 with respect to the mortgaged premises as to permit Movant to foreclose on its mortgage and allow Movant or any other purchaser at Sheriff's Sale to take any legal or consensual action for enforcement of its right to possession of, or title to, said premises (such actions may include but are not limited to the signing of a deed in lieu of foreclosure or entering into a loan modification agreement) and for legal fees and costs incurred with regard to this Motion; and

b. that Rule 4001(a)(3) is not applicable and **NATIONAL CITY MORTGAGE COMPANY D/B/A ACCUBANC MORTGAGE** may immediately enforce and implement the Order granting relief from the automatic stay; and

c. granting any other relief that this Court deems equitable and just.

/s/ Peter J. Mulcahy, ESQUIRE
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Dated: August 19, 2009